**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 498/1994

MRS. PHOOL KANWAR & ANR.
v
MISS SWETA PAREEK & ANR.

Date of Judgment: 19th JANUARY, 2007.

Hon'ble Mr. Justice R. S. Chauhan

Mr. Virendra Bandhu for the appellants.
Mr. R.P. Garg for the respondents.

By Court:

The appellant has challenged the order dated 5.2.94 passed by the District Judge, Jaipur City, Jaipur whereby he has granted the succession certificate in favour of the respondent No.1.

The brief facts of the case are that one Shri Kailash Chand Pareek filed a petition under Section 372 of The Indian Succession Act, 1925 on behalf of his minor daughter Sweta Pareek through the appellant No.1, Mrs. Phool Kanwar. In the petition it was alleged that the daughter of appellant No.1, Smt. Vijaylaxmi had adopted Shweta as daughter, on 9.8.87, in the Govind Devji Temple situated at Jaipur. It was further claimed that Smt. Vijaylaxmi was in the Social Welfare Department. However, she met with an accident near Jammu on 13.10.87. Subsequently, she expired due to the said

accident. Since Shweta was the adopted daughter, the petition was moved on her behalf for issuance of he succession certificate with regard to assets valued at Rs. 1,45,300/-. It was further claimed that Smt. Vijaylaxmi had deposited a sum of Rs. 40,000/- with the Rajasthan Housing Board for the allotment of a house. Therefore, a succession certificate was also required for the said purpose. After the submission of the said application, a notice was published in the Rajasthan Patrika on 2.6.88. According to the appellants they discovered through the notice that a petition was allegedly filed on behalf of Shweta by the appellant No.1. The appellant No.1 immediately moved an application before the Court wherein she alleged that she had not filed any such application on behalf of Shweta. In fact Shweta's father, Kailash Chand Pareek, had played a fraud on her in getting the application submitted. Therefore, the same deserved to be dismissed. She and the appellant No.2, Satyanarain Tewari further claimed that there is no evidence to prove that Shweta was ever adopted by Smt. Vijaylaxmi. Meanwhile, Shri Kailash Chand Pareek also filed an application before the learned trial court for appointing him as Shweta's guardian. Ultimately, his application was allowed vide order dated 24.2.90. The learned trial court permitted him to amend the application filed by appellant No.1 on behalf of Shweta. On 3.3.90 an amended application was filed on Shweta's behalf. The appellant filed the

reply and claimed that Shweta was never adopted. According to them a fraud was being played by Shri Kailash Chand Pareek that his daughter had been adopted by Smt. Vijaylaxmi. The learned trial court framed six issues. In order to support her case, the respondent-plaintiff examined four witnesses and submitted sixteen documents. In order to support their case, the appellants examined five witnesses. After hearing both the parties and after considering oral and documentary evidence, vide order dated 5.2.94, the learned trial court issued a succession certificate in favour of Shweta. Hence this appeal before this Court.

Mr. Virendra Bandhu, learned counsel for the appellant, has strenuously argued that there is no evidence to show that Sweta was properly adopted by Smt. Vijaylaxmi in the Govind Devji Temple at Jaipur. According to him it is imperative that the consent of the mother should be taken prior to adoption of the child. In the present case Kailash Chand Pareek has merely stated that he had performed the ritual and had given away his daughter to Smt. Vijaylaxmi. Since the consent of the mother was not taken, therefore, adoption is improper.

On the other hand, Mr. R.P. Garg, learned counsel for the respondent has vehemently contended that the consent of Smt. Shakuntala Pareek was taken as she was present at the adoption

ceremony in Govind Devji Temple. He has further argued that there is sufficient documentary evidence to prove the fact that Shweta was adopted by Smt. Vijaylaxmi. Therefore, he has supported the impugned order.

We have heard both the learned counsels and have perused the impugned order.

A bare perusal of Kailash Chand Pareek's testimony clearly reveals that according to him, on 9.8.87, the members of the family had gathered at Govind Devji's Temple. His wife, Smt. Shakuntala Pareek was also present there. According to him the Priest had poured some water on the hands of Smt. Vijaylaxmi and asked her to take a vow. Thereafter, in the presence of his wife Shri Kailash Chand Pareek had placed her daughter on the lap of Smt. Vijaylaxmi. This ceremony was attended by Satish Pareek, Asha Pareek and his wife. The fact that Smt. Shakuntala, the wife of Shri Kailash Chand Pareek was physically present during the ceremony clearly proves that she had consented to the adoption of Shweta by Smt. Vijaylaxmi. Therefore, the contention of the learned counsel for the appellant that the consent was missing is unsustainable.

It is further revealed that in the obituary column published after the death of Smt. Vijaylaxmi, the name of Shweta

was clearly shown as her daughter. The said obituary column was published by Smt. Vijaylaxmi's brother Satyanarain and Shrinarain, the appellant No.2 and defendant No.2. Thus, they had clearly admitted through this document that Shweta was, indeed, adopted daughter of Smt. Vijaylaxmi. Furthermore, Ex. P.5 is a letter written by Shrinarain to the Social Welfare Department wherein he has clearly stated that Shweta is the daughter of Vijaylaxmi. Therefore, she is entitled to the General Provident Fund, Life Insurance, the remaining salary and the pension of Smt. Vijaylaxmi. A bare perusal of the impugned order clearly reveals that the learned trial court has meticulously examined the evidence on record and has passed a reasoned order.

In the result, this appeal is meritless. It is, hereby, dismissed. There shall be no order as to costs.

(R.S. CHAUHAN) J.

MRG.